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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DWAYNE KULA, et al.,

9 Plaintiffs,

10 v.

11 EVERY WATT MATTERS, LLC,
12 et al.,

Defendants.

C18-471 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) The complaint in this matter alleges primarily state law claims and
16 premises jurisdiction in part on diversity. The complaint alleges that plaintiff
17 Dwayne Kula is a resident of Rhode Island and is the sole member of plaintiffs
18 DRK Enterprises, LLC and Everlite 99, LLC. The complaint further alleges that
19 Every Watt Matter International, LLC (“EWM International”) is a Washington limited
20 liability company, but the Washington Secretary of State has no record of such entity.
21 See <https://www.sos.wa.gov/corps/>. The caption of the complaint identifies a different
22 entity as a defendant, namely Every Watt Matters, LLC, which is an active Washington
23 limited liability company. See id. Whether the complaint’s allegations concerning
EWM International are actually about Every Watt Matters, LLC is unclear, but to the
extent they are, the Court does not have diversity jurisdiction. According to the
complaint, plaintiff Everlite 99 is a member of EWM International. Assuming that
EWM International and defendant Every Watt Matters, LLC are the same entity, then at
least one plaintiff and one defendant are citizens of the same state, namely Rhode Island.
See Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (a
limited liability company is a citizen of every state in which its members are citizens).

1 (2) Because the only basis of jurisdiction appears to be plaintiffs' federal claim
2 under the Racketeer Influenced and Corrupt Organizations provisions of the Organized
3 Crime Control Act of 1970, Pub. L. 91-452 (the "RICO Act"), the Court hereby
4 DIRECTS plaintiffs to file a RICO case statement within twenty-eight (28) days of the
5 date of this Minute Order. **Failure to adequately respond to this Order might result**
6 **in dismissal of this case without prejudice for lack of subject matter jurisdiction.**

7 The RICO case statement shall include the facts upon which plaintiffs are relying to
8 support their RICO claim as a result of the "reasonable inquiry" required by Federal Rule
9 of Civil Procedure 11. The RICO statement shall be in a form using the numbers and
10 letters as set forth below, and shall state in detail and with specificity the following
11 information:

- 12 1. RICO Provision: State whether the alleged unlawful conduct is in violation
13 of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).
- 14 2. Defendants: List each RICO defendant and state the alleged misconduct
15 and basis of liability of each RICO defendant.
- 16 3. Other RICO Violators: List all alleged RICO violators other than the RICO
17 defendants listed above, and state the alleged misconduct of each alleged
18 wrongdoer.
- 19 4. Victims: List the alleged victims and state how each victim was allegedly
20 injured.
- 21 5. Pattern of Racketeering Activity: Describe in detail the pattern of
22 racketeering activity or collection of unlawful debts alleged for each RICO
23 claim. A description of the pattern of racketeering shall include the
following information:
 - a. List the alleged predicate acts and the specific statutes that were
allegedly violated;
 - b. Provide the dates of the predicate acts, the participants in the
predicate acts, and a description of the facts surrounding the
predicate acts;
 - c. If the RICO claim is based on the predicate offenses of mail fraud,
wire fraud, or fraud in the sale of securities, then state the
circumstances constituting fraud "with particularity," Fed. R. Civ.
P. 9(b), including the time, place, and contents of the alleged
misrepresentations, and the identity of persons to whom and by
whom the alleged misrepresentations were made;

- 1 d. State whether there has been a criminal conviction for violation of
2 the predicate acts and, if so, provide particulars;
- 3 e. State whether civil litigation has resulted in a judgment with respect
4 to the predicate acts and, if so, provide particulars; and
- 5 f. Describe how the predicate acts are both “related” and “continuous”
6 within the meaning of *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229,
7 239 (1989), and its progeny, including *Allwaste, Inc. v. Hecht*, 65
8 F.3d 1523, 1527 (9th Cir. 1995).
- 9 6. Enterprise: Describe in detail the alleged enterprise and specify what
10 structure it had. A description of the enterprise shall include the following
11 information:
- 12 a. State the names of the individuals, partnerships, corporations,
13 associations, or other legal entities, that allegedly constitute the
14 enterprise;
- 15 b. Describe the structure, purpose, function, and course of conduct of
16 the enterprise;
- 17 c. State whether any defendants are employees, officers, or directors of
18 the alleged enterprise or are associated with the alleged enterprise;
- 19 d. Describe the alleged relationship between the activities of the
20 enterprise and the alleged pattern of racketeering activity, and
21 discuss how the racketeering activity differs from the usual and daily
22 activities of the enterprise, if at all; and
- 23 e. Describe how the enterprise was affected by or benefitted from the
alleged pattern of racketeering activity.
7. Interstate or Foreign Commerce: Describe the effect of the activities of the
enterprise on interstate or foreign commerce.
8. If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the
following information: (i) State who received the income derived from the
pattern of racketeering activity or through the collection of an unlawful
debt; and (ii) Describe the use or investment of such income.
9. If the complaint alleges a violation of 18 U.S.C. § 1962(b), provide the
following information: (i) Describe in detail the acquisition or maintenance
of any interest in or control of the alleged enterprise; and (ii) State whether

the same entity is both the liable “person” and the “enterprise” under § 1962(b).

10. If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information: (i) State who is employed by or associated with the enterprise; and (ii) State whether the same entity is both the liable “person” and the “enterprise” under § 1962(c).
11. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.
12. Injury to Business or Property: Describe (i) the alleged injury to business or property, and (ii) the direct causal relationship between the alleged injury and the violation of the RICO Act.
13. Damages: List the damages sustained by reason of the alleged violation of § 1962, indicating the amount for which each defendant is allegedly liable.

(3) The Court has received a letter from Andrew V. Achiron of Silverman Shin & Byrne PLLC, dated May 4, 2018, requesting an extension of the deadline for defendants to file a responsive pleading or motion. Mr. Achiron is not yet admitted pro hac vice.

(4) The Clerk is directed to send a copy of this Minute Order to all counsel of record and to Andrew V. Achiron, Silverman Shin & Byrne PLLC, 88 Pine Street, 22nd Floor, New York, NY 10005.

Dated this 10th day of May, 2018.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk